

1 THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 -----
5 UNITED STATES OF AMERICA,)
6 Plaintiff,)
7 v.) No. CR18-292JCC
8 JOSEPH LOREN ALLEN,)
9 Defendant.)
10 -----

11 ARRAIGNMENT
12 The Honorable Paula L. McCandlis Presiding
13 December 6, 2018
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A P P E A R A N C E S

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PRESIDING JUDGE:

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December 6, 2018

THE CLERK: All rise. United States District Court for the Western District of Washington is again in session. The Honorable Paula L. McCandlis presiding.

THE COURT: Good morning. Please be seated.

MR. HAMOUDI: Good morning, Your Honor.

THE CLERK: Your Honor, the matter before the Court this morning is an arraignment in Case CR18-292 assigned to Judge Coughenour, United States of America versus Joseph Loren Allen.

Please make your -- Counsel, please make your appearances.

MS. MANCA: Good morning, Your Honor. Jessica Manca for the United States.

THE COURT: Good morning, Ms. Manca.

MR. HAMOUDI: And good morning, Your Honor. Mohammad Hamoudi from the Federal Defender's Office. I'm here on behalf of Mr. Allen.

THE COURT: Good morning, Mr. Hamoudi.

And good morning, Mr. Allen. Mr. Allen, I want to let you know that you're here for your arraignment. And during an arraignment, you'll be advised to the charges that have been returned against by the grand jury and the penalties associated with those charges. Your attorney will then be

asked to enter a plea on your behalf. And that is the procedure today, okay? And we --

THE DEFENDANT: Okay.

THE COURT: -- set a trial date as well.

THE DEFENDANT: Okay.

THE COURT: Mr. Hamoudi, will you waive a formal reading of the indictment?

MR. HAMOUDI: We do, Your Honor.

THE COURT: All right.

Ms. Manca, will you please advise Mr. Allen of the charges returned against him by the grand jury and the penalties associated with those charges.

MS. MANCA: Yes, Your Honor. Mr. Allen is charged in a four-count indictment.

Count 1 alleges a charge of Felon in Possession of a Firearm, allegedly occurring on or about May 28th, 2018, in the city of Auburn within this district. Mr. Allen, having been convicted of felony crimes of Attempt to Elude, Taking a Motor Vehicle without Permission, Taking a Motor Vehicle without Permission and Attempt to Elude, Possession of Methamphetamine, Taking a Motor Vehicle without Permission, Unlawful Possession of a Firearm in the First Degree, and Unlawful Possession of a Firearm in the Second Degree, did knowingly possess a Sig Sauer .40 caliber handgun, a firearm that had been shipped and transported in interstate and

foreign commerce in violation of Title 18, United States Code, Section 922(g)(1).

Count 2 also alleges a charge of Felon in Possession of a Firearm on a different date, August 23rd, 2018, in the city of Federal Way within this district. Mr. Allen, having been convicted of the felony crimes described in Count 1, did knowingly possess, in and affecting interstate and foreign commerce, a Taurus 9mm caliber handgun in violation of Title 18, United States Code, Section 922(g)(1).

Each of these crimes, Counts 1 and 2, carries a maximum term of imprisonment of up to ten years, a fine of up to \$250,000, a period of supervised release of up to three years, and a \$100 special assessment.

Count 3 alleges Possession of Methamphetamine with Intent to Distribute. On or about August 23rd, 2018, in the city of Federal Way within this district, Mr. Allen did knowingly and intentionally possess with intent to distribute methamphetamine in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C). This crime carries the maximum term of up to 20 years imprisonment, a maximum fine of one million dollars, at least three years of supervised release, and a \$100 special assessment.

Count 4 alleges Possession of a Firearm in Furtherance of a Drug Trafficking Crime. On or about August 23rd, 2018, in the city of Federal Way within this district, Mr. Allen

1 possessed a firearm, a Taurus 9mm caliber handgun, in
2 furtherance of possession of methamphetamine with intent to
3 distribute, as charged in Count 3 above, in violation of
4 Title 18, United States Code, Section 924(c).

5 There's also an asset forfeiture allegation as to the
6 firearms.

7 THE COURT: Thank you Ms. Manca.

8 Mr. Hamoudi, what plea what would you like to enter on
9 your client's behalf?

10 MR. HAMOUDI: Not guilty to all charges.

11 THE COURT: Pleas of not guilty will be entered as to all
12 charges.

13 Do you have a trial date?

14 THE CLERK: Yes, Your Honor. Judge Coughenour has
15 scheduled trial for January 22nd, 2019, at 9:30 a.m.
16 Proposed trial exhibits are due that same day. Pretrial
17 motions are due December 27th.

18 THE COURT: Mr. Hamoudi, do you wish pretrial discovery?

19 MR. HAMOUDI: Yes, we do, Your Honor, under the local
20 rules and criminal rules of procedure.

21 THE COURT: I would direct counsel to meet and confer and
22 carry out the respective obligations regarding discovery in
23 criminal cases.

24 Is there anything further from the Government?

25 MS. MANCA: No, Your Honor.

THE COURT: Anything further, Mr. Hamoudi?

MR. HAMOUDI: Yes, Your Honor. At Mr. Allen's initial appearance, I had raised the prospect of an issue with Judge Donohue. The issue is, is that Mr. Allen has some medical issues that relate to this case. And he is not, at this point, receiving the care that he needs. And I want to be specific. He was supposed to receive a follow-up visit with a surgeon -- an orthopedic surgeon because his -- both of his legs were shattered after he was run over by a police vehicle. And in addition, he needs physical therapy.

Regardless of what he's charged with, true or not, my concern right now is, is he does not suffer permanent injuries. Without physical therapy, the existing conditions will exasperate. We have placed the Bureau Of Prisons Federal Detention Center on notice that he needs to get the care that he needs. I've let the U.S. attorneys know that he needs to get care. As far as I'm concerned, they both represent the Department of Justice, and I'm asking them to come up with a solution to get him the care that he needs. And if they do not or are not able to, I think that I would want to return to court and have a fashion of bond to release him somewhere where he can start to receive care.

I don't think he's a flight risk or a danger to the community, given his medical state. But the last thing I want to happen is, regardless of what's happened in the

1 case, is that he -- ten years down the line he's not able to
2 walk or things like that. I think that's important.

3 THE COURT: Thank you, Mr. Hamoudi.

4 Ms. Manca, did you have a response to the --

5 MS. MANCA: Yes, Your Honor, two things. I think the
6 Government has been in touch with the Bureau of Prisons
7 regarding this before Mr. Allen was transferred here, so
8 they're aware of the medical condition. And I think
9 Mr. Hamoudi has also been in touch with counsel for the
10 Bureau of Prisons.

11 What would be helpful for the Government at this point is
12 for the defense to provide a list of the care that they
13 believe that Mr. Allen needs and sourcing for that, the
14 explanation -- the medical explanation for what care is
15 needed. And then we can provide that to the Bureau of
16 Prisons and receive a response from them regarding what they
17 feel that they can provide in response to that. And that
18 will allow us to have a productive conversation.

19 THE COURT: So I understood that they had asked for some
20 physical therapy.

21 MS. MANCA: Uh-huh.

22 THE COURT: And so what would be -- when you say "the
23 sourcing," what are you talking about exactly?

24 MS. MANCA: Well, I assume that physical therapy, just
25 given our understanding of general medicine --

1 THE COURT: Yeah.

2 MS. MANCA: -- is required. But a more specific
3 explanation of -- perhaps a doctor's note, regarding a
4 follow-up, of this is the referral that we have for this --
5 for this reason and this is what we expect, and then what
6 the Bureau of Prisons can provide. For example, we don't
7 know how many times a week, we don't know how often or what
8 the duration might be, what the scope of that physical
9 therapy might entail, and whether, you know, it's common for
10 people to be released from the Bureau of Prisons for small
11 sets of time to perform various medical procedures. And I
12 don't know whether the scope of that physical therapy is
13 going to be within what the Bureau of Prisons can do. But
14 until we have a concrete treatment plan or explanation of
15 treatment needs, I think it's difficult for the Bureau of
16 Prisons to say, "Yes, we can do this" or "No, we can't."

17 THE COURT: And what about the issue that was raised to
18 have a hearing so that -- so that there could be a
19 discussion about whether a bond is appropriate?

20 MS. MANCA: I think we, um -- well, Mr. Allen stipulated
21 to detention without prejudice, so I think he's entitled to
22 a hearing upon a showing of change in circumstances or
23 anything else that would comply with the local rule in that
24 respect. I think in order for there to be a change of
25 circumstances that would meet that requirement, there would

1 need to be a showing by the defense that the Bureau of
2 Prisons is unable to meet the requirements that Mr. Allen
3 needs for medical care. Not only that, but also that
4 whatever plan is in place would ensure the safety of the
5 community and ensure Mr. Allen's likelihood to appear for
6 court. So there are a number of steps, I think, that need
7 to be -- happen preliminarily before either party, and
8 particularly the defense, would be in a position to make
9 that threshold showing.

10 THE COURT: All right. Thank you, Ms. Manca. And thank
11 you for your explanations as well.

12 Mr. Hamoudi, I think that you -- it sounds as though you
13 have been making these -- the same point for Mr. -- for
14 Judge Donohue as well as for this Court. And it seems to me
15 that, with some paperwork, perhaps you could bring that
16 motion to the Court's attention.

17 MR. HAMOUDI: Your Honor, if I may, I have paperwork right
18 here. I have medical records from St. Francis and
19 Harborview Medical Center that's saying he needs to have a
20 follow-up with an orthopedic surgeon. He was in a
21 wheelchair. He had casts. There are no orthopedic surgeons
22 at the Federal Detention Center. So as far as specifically
23 what's needed now, the first thing that needs to be done is
24 an arrangement needs to be made for him to be taken to an
25 orthopedic surgeon who can see how he has been recovering

1 since two major surgeries he's had. Then the orthopedic
2 surgeon will then say, "This is what's needed for you" --
3 like any normal citizen -- "to recover from these injuries,"
4 and can lay out a recovery plan, and we can get the insight
5 that the Government requests.

6 THE COURT: Okay. So the first question I have, based on
7 what the Government has told me, is have the -- you have
8 provided that information to the Bureau of Prisons.

9 MR. HAMOUDI: Yes.

10 THE COURT: Okay. And then what is the process as far as
11 with Pretrial Services as working with them to maybe create
12 a plan?

13 MR. HAMOUDI: My general experience is this, is that it
14 really has to do with the staffing and resources of the
15 Federal Detention Center because they have to commit
16 corrections officers and have transportation come by, pick
17 him up, and then deliver him to the facility for him to get
18 the care and need he -- he's supposed to get. The
19 alternative approach is, is that if the Court wants him to
20 take on that responsibility, then what would happen is that
21 we would fashion a bond, and he's no longer the
22 responsibility of the Federal Detention Center.

23 So all I am saying is this -- that I know he's got to go
24 see the surgeon. So at this point he's the Department of
25 Justice's responsibility, and they can go ahead and then

1 make the arrangements. If they're saying to us, "We don't
2 have the resources" or "We are not willing to," then they
3 need to just tell the Court that either today or in writing
4 in the next few days, and then what we can do is then come
5 up with fashioning a bond so that I can make my own
6 arrangements to make sure he gets treatment. That's my
7 position.

8 THE COURT: All right. What I would like to see happen is
9 have this motion that you're making and the evidence that
10 you have for your client be fashioned into a written motion
11 for this Court.

12 MR. HAMOUDI: Okay.

13 THE COURT: And then we can schedule that. I will be
14 certainly here today and tomorrow. I don't know what the
15 government schedule is.

16 But, Mr. Clerk, do we have a time?

17 THE CLERK: Your Honor, tomorrow is pretty wide open as
18 far as hearing times available. There's also later this
19 afternoon, possibly at 3:00, if it came to that. But
20 tomorrow, if the parties would just contact me, we can set a
21 time.

22 MS. MANCA: And, Your Honor, the Government's position is
23 that -- you know, I don't know how long the Bureau of
24 Prisons has had this information, so, certainly, they need
25 time to consider this information, go back and decide how

1 much time it would take to comply with it. So today or
2 tomorrow isn't necessarily, I think, feasible, again, not
3 having talked to them. This is all coming to my attention
4 now --

5 THE COURT: Right.

6 MS. MANCA: -- for the very first time. Not the general
7 medical condition that Mr. Allen has, but his need for a
8 specific follow-up step. So I think, again, with a written
9 motion, we can -- we can set a hearing probably for
10 tomorrow. I think next week would probably be better. And
11 then I can have the Bureau of Prisons on board. But, again
12 I'll defer to the Court.

13 THE COURT: I want to set the motion for tomorrow --

14 MR. HAMOUDI: I --

15 THE COURT: -- if that's possible. Or no.

16 MR. HAMOUDI: -- I would love -- time, it would -- I would
17 love to the this quickly. But I --

18 THE COURT: Yeah.

19 MR. HAMOUDI: -- think that -- Your Honor, if I may
20 suggest, I think the better approach is, is that --
21 Ms. Manca or somebody in her office -- to get the Federal
22 Detention Center on the phone and get me on the phone and
23 get an understanding of what the realities -- whether this
24 is going to happen and when. And I think that if we
25 understand that that's not going to happen, then I think we

1 can set it for sometime next week. But I agree with
2 Ms. Manca that we should explore that. But at this time I
3 don't see it happening. But maybe persuasion from the
4 United States Attorney's Office will result in something
5 else. That's -- I think later would be better, actually.

6 THE COURT: Okay.

7 Is that --

8 MS. MANCA: Yeah. That --

9 THE COURT: -- is that acceptable to you?

10 MS. MANCA: -- that work for me, uh-huh.

11 THE COURT: All right. So if you do need a hearing date,
12 you know where to call -- who to call.

13 MR. HAMOUDI: Thank you very much, Your Honor.

14 THE COURT: Yeah. All right.

15 Anything further from the Government?

16 MS. MANCA: Not from the Government, thank you.

17 THE COURT: Anything further, Mr. Hamoudi?

18 MR. HAMOUDI: Nothing else. Thank you, Your Honor.

19 THE COURT: All right. Mr. Allen, good luck. I am very
20 sorry --

21 THE DEFENDANT: Thank you.

22 THE COURT: -- to hear your circumstances.

23 THE DEFENDANT: Thank you.

24 THE CLERK: All rise. Court is in recess.

25 (Proceedings concluded)

1 /s/Jennifer A.P. Albino, CET/ October 15, 2019

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